

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEREK TUCSON, ROBIN SNYDER,
MONSIEREE DE CASTRO, and ERIK
MOYA-DELGADO,

Plaintiffs,

vs.

CITY OF SEATTLE, ALEXANDER
PATTON, TRAVIS JORDAN, DYLAN
NELSON, JOHN DOES (#1-4) AND JANE
DOES (#1-2)

Defendants.

No. 2:23-cv-00017-MJP

[PROPOSED] STIPULATED
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends

only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material may include the following documents and tangible things produced or otherwise exchanged: (1) medical, psychological, employment, financial and family related records of plaintiff, defendants and/or third parties (including personal financial, medical, psychological or family related materials that are relevant to the action; personal financial, medical, psychological or family related materials, that are not relevant to this action will be redacted); (2) records that could implicate privacy rights of the individual defendants, plaintiff or third parties, including, but not limited to, personal identifying information (“PII”) such as date of birth, social security number, employee ID number, personal home address, phone number, e-mail address, criminal record number, driver’s license number, state identification number, private communications, social media content, and protected expressive activities; (3) personal financial information; (4) passport information; (5) immigration status; (6) video recordings within correctional facilities; (7) video recordings from officer body camera; (8) any information protected from release by statute and exempt from public disclosure; (9) police personnel files; (10) unsustained police internal investigations and disciplinary files; (11) unsustained complaints of police misconduct; and (12) non-public tactical policies and procedures and training protocols.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
3 produced by another party or by a non-party in connection with this case only for evaluation of the
4 material or of the case, prosecuting and/or defending the case, evaluation experts and expert opinions
5 or attempting to settle this litigation. Confidential material may be disclosed only to the categories of
6 persons and under the conditions described in this agreement. Confidential material must be stored
7 and maintained by a receiving party at a location and in a reasonably secure manner that ensures that
8 access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
10 the court or permitted in writing by the designating party, a receiving party may disclose any
11 confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as employees of
13 counsel to whom it is reasonably necessary to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including in house counsel) of the
15 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree
16 that a particular document or material produced is for Attorney’s Eyes Only and is so designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this
18 litigation and if provided copies of said material, have signed the “Acknowledgment and Agreement
19 to Be Bound” (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of
22 confidential material, provided that counsel for the party retaining the copy or imaging service
23 instructs the service not to disclose any confidential material to third parties and to immediately return
all originals and copies of any confidential material;

 (f) during their depositions, witnesses in the action to whom disclosure is
reasonably necessary, or who have signed the “Acknowledgment and Agreement to Be Bound”

(Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(h) mediators and their staff.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items,

1 or communications for which protection is not warranted are not swept unjustifiably within the ambit
2 of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
4 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
5 encumber or delay the case development process or to impose unnecessary expenses and burdens on
6 other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
8 protection do not qualify for protection, the designating party must promptly notify all other parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
11 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure
12 or discovery material that qualifies for protection under this agreement must be clearly so designated
13 before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL" to each page that contains
17 confidential material. If only a portion or portions of the material on a page qualifies for protection,
18 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
19 markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
21 any participating non-parties must identify on the record, during the deposition or other pretrial
22 proceeding, all protected testimony. If a party or non-party desires to protect confidential
23 information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on
the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the
 2 producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 4 designate qualified information or items does not, standing alone, waive the designating party’s right
 5 to secure protection under this agreement for such material after a meet and confer process. If the
 6 parties cannot agree to the proposed designation the issue shall be brought to the attention of the
 7 Court. Upon timely correction of a designation, as set forth above, the receiving party must make
 8 reasonable efforts to ensure that the material is treated in accordance with the provisions of this
 9 agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
 14 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a
 15 confidentiality designation by electing not to mount a challenge promptly after the original
 16 designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 18 regarding confidential designations without court involvement. Any motion regarding confidential
 19 designations or for a protective order must include a certification, in the motion or in a declaration
 20 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 21 affected parties in an effort to resolve the dispute without court action. The certification must list the
 22 date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face
 23 meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion

1 in any such motion shall be on the designating party. Frivolous challenges, and those made for an
 2 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
 3 expose the challenging party to sanctions. All parties shall continue to maintain the material in
 4 question as confidential until the court rules on the challenge.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 6 LITIGATION

7 If a party is served with a subpoena or a court order issued in other litigation that compels
 8 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 9 must:

10 (a) promptly notify the designating party in writing and include a copy of the
 11 subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue
 13 in the other litigation that some or all of the material covered by the subpoena or order is subject to
 14 this agreement. Such notification shall include a copy of this agreement; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 16 the designating party whose confidential material may be affected.

17 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 19 material to any person or in any circumstance not authorized under this agreement, the receiving
 20 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
 21 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
 22 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
 23 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
 Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently produced
 4 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
 5 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 6 modify whatever procedure may be established in an e-discovery order or agreement that provides
 7 for production without prior privilege review. The parties agree to the entry of a non-waiver order
 8 under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving party
 11 must delete or destroy all confidential material that was produced by other parties or nonparties,
 12 including all copies, extracts and summaries thereof.

13 Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents
 14 filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial
 15 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such
 16 materials contain confidential material.

17 The confidentiality obligations imposed by this agreement shall remain in effect until a
 18 designating party agrees otherwise in writing or a court orders otherwise.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 /s/ Jessica Leiser with permission
 21 By: MacDONALD HOAGUE & BAYLESS
 22 705 Second Avenue, Suite 1500
 23 Seattle, Washington 98104
 Tel 206.622.1604 Fax 206.343.3961

 Braden Pence, WSBA #43495
 Email: bradenp@mhb.com
 Nathaniel Flack, WSBA #58582
 Email: nathanielf@mhb.com

/s/ Jessica Leiser
 By: Seattle City Attorney's Office
 701 Fifth Avenue, Suite 2050
 Seattle, WA 98104
 Phone: (206) 684-8200
 Kerala Cowart, WSBA# 53649
 E-mail: kerala.cowart@seattle.gov
 Jessica Leiser, WSBA# 49349
 E-mail: jessica.leiser@seattle.gov
 Assistant City Attorneys
 Attorneys for Defendants

1 By: THE LAW OFFICE OF NEIL FOX
2 2125 Western Ave Ste 330
3 Seattle, WA 98121-3573
4 Tel 206.728.5440 Fax 866.422.0542

5 Neil Fox, WSBA #15277
6 Email: nf@neilfoxlaw.com

7 *Attorneys for Plaintiffs*

8
9 PURSUANT TO STIPULATION, IT IS SO ORDERED

10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
11 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
12 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
13 documents, including the attorney-client privilege, attorney work-product protection, or any other
14 privilege or protection recognized by law.

15 DATED: _____

16 _____
17 The Honorable Marsha J. Pechman
18 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Western District of Washington on [date] in the case of
Derek Tucson, et al. v. City of Seattle, et al., 2:23-cv-00017-MJPI agree to comply with and to be bound
by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western
District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even
if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

<p>Nathaniel Flack, WSBA # 58582 Braden Pence, WSBA #43495 MacDonald Hoague & Bayless 705 Second Avenue, Suite 1500 Seattle, WA 98104</p> <p>Neil Fox, WSBA# 15277 Law Office of Neil Fox 2125 Western Avenue, Suite 330 Seattle, WA 98121-3573</p> <p><i>[Attorneys for Plaintiff]</i></p>	<p>(x) Via Email NathanielF@mhb.com LucasW@mhb.com BradenP@mhb.com</p> <p>nf@neilfoxlaw.com</p>
<p>Jessica Leiser, WSBA # 49349 Brandon Rain, WSBA # 45247 Ghazal Sharifi, WSBA # 47750 Seattle City Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104</p> <p><i>[Attorneys for Defendants]</i></p>	<p>(x) Via Email Jessica.Leiser@Seattle.gov Brandon.Rain@Seattle.gov Ghazal.Sharifi@Seattle.gov</p>

/s/ Laura Sanabria
 Laura Sanabria, Legal Assistant